

GAO

Report to the Chairman,
Committee on Governmental Affairs
United States Senate

February 1986

JUSTICE
DEPARTMENT

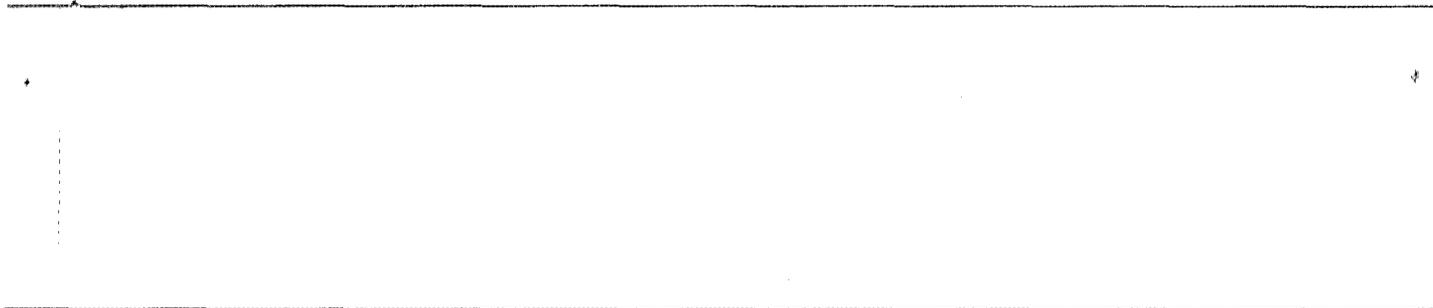
An Assessment of the
Need for a Statutory
Inspector General



129429

RESTRICTED—Not to be released outside the General Accounting Office except on the basis of specific approval by the Office of Congressional Relations.

RELEASED



Accounting and Financial
Management Division

B-203900

February 24, 1986

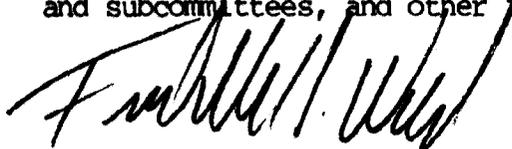
The Honorable William V. Roth, Jr.
Chairman, Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

This report is in response to your May 18, 1984, request that we review the organization and operation of the Department of Justice's audit and investigative activities to determine how they differ from those authorized under the Inspector General Act of 1978 and to offer a recommendation on whether there should be a statutory inspector general (IG) at Justice. Our review was later expanded at your request to address Justice's objections to establishing an IG at Justice and to provide information on the different methods of structuring a Justice IG.

Our review focused on the organization and operation of Justice's audit groups and internal investigations units to determine whether the audit groups adhere to generally accepted government audit standards regarding the need for personal and organizational independence and coordination among an agency's various audit groups. Further, we examined whether the internal investigations units are organizationally independent and free from such impairments as could affect staff objectivity.

Unless you publicly announce the contents of this report earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies of this report to the Attorney General, appropriate congressional committees and subcommittees, and other interested parties.



Frederick D. Wolf
Director

Executive Summary

The Department of Justice has a system of audit and internal investigation that is not structured, and does not operate, like the systems of federal agencies with statutory inspectors general (IGs). Consequently, the Chairman of the Senate Committee on Governmental Affairs asked GAO to review the organization and operation of Justice's audit and investigative units. It was subsequently agreed with the Committee staff that GAO would:

- determine how these units differ from those authorized under the Inspector General Act of 1978,
- review Justice's objections to establishing a statutory IG, and
- offer a recommendation on whether there should be a statutory IG at Justice.

Background

Since 1976, the Congress has established statutory IGs in all federal executive departments except Justice and Treasury. They were excluded because the Congress wanted to give additional consideration to both departments' objections to a statutory IG.

Justice has numerous audit and internal investigations units, located throughout various bureaus, divisions, and field offices, which receive audit and internal investigative oversight from the departmental level audit staff and Office of Professional Responsibility. It maintains that these units serve the basic inspector general function and that a statutory IG, who could render judgments on Justice's activities, might interfere with or jeopardize their investigations, prosecutions, and other law enforcement activities.

Results in Brief

GAO believes that, unlike the statutory IGs, Justice's audit and internal investigations units' structure and management lack organizational independence, and that this may inhibit independent, objective assessments and reporting to the Attorney General and the Congress on departmental activities. GAO also believes that, in light of the primary responsibilities of IGs under the Inspector General Act and the experience of IGs in other agencies, the ill effects Justice anticipates if included under the Act are unlikely to occur.

Principal Findings

GAO's survey of the Department of Justice's audit and internal investigation structure found it to be fragmented among the Department's bureaus and offices.

**Statutory Inspectors
General**

The audit and investigative staffs of the statutory IGs are directed to report, by statute, directly to the agency head or deputy and the Congress, to perform comprehensive departmentwide audits and investigations, and are to be organizationally independent. This organization and management provides a maximum degree of independence to the IGs and assures that the results of their work are easily visible to the agency heads. (See pages 20-21.)

Justice Audit Activities

GAO believes the structure and management of Justice's audit and internal investigations units lack organizational independence and fail to maintain an independent appearance. For example, with the exception of the Office of Professional Responsibility, auditors and investigators:

- do not have direct access to the Attorney General,
- review areas or investigate persons in the entity to which they are assigned, and
- report to officials with responsibility for the areas or persons under review. (See pages 18-19.)

Justice has expressed concern that amending the Inspector General Act of 1978 to include Justice could disrupt investigations, litigation, and other law enforcement activities. Justice has also expressed concern regarding the structure and operation of a statutory IG. Therefore, since passage of the Inspector General Act of 1978, Justice has expressed concern about extension of the 1978 IG Act to Justice in any form. Justice's concern over the IG's disclosure of sensitive or classified information should be allayed by provisions of the Inspector General Act prohibiting the public disclosure of information that is part of any ongoing criminal investigation or that is otherwise prohibited from disclosure by law or executive order. GAO believes several options are available to address in legislation some of Justice's concerns and still establish an IG to meet the primary objectives of the 1978 IG Act. (See pages 28-32.)

Recommendation

GAO recommends that the Congress amend the Inspector General Act of 1978 to establish a statutory Office of Inspector General at the Department of Justice in order to strengthen management's control; promote efficient and effective operation; combat fraud, waste, and abuse; and ensure that the Attorney General and the Congress will be informed of significant findings. To address some of Justice's concerns, the Congress may wish to consider various options in structuring such an office and establishing its responsibilities. (See page 32.)

Agency Comments

In commenting on a draft of this report, Justice reiterated its opposition to the creation of a statutory IG in any form for the Department of Justice. Since passage of the Inspector General Act of 1978, Justice has consistently expressed what it considers to be serious concerns with extension of the 1978 Act to the Department of Justice. Further, Justice stated that although the GAO review recognized some of its concerns, a substantive assessment of the impact of establishing an IG at Justice was not made and, lacking a demonstrable basis for need, Justice continues to oppose the establishment of an IG. This review was not intended to assess the performance of Justice's audit and investigative units, but rather, to determine how these units differ from those authorized under the 1978 Act. Appendix IV contains Justice's comments and GAO's response to each comment. GAO has considered Justice's comments; however, GAO continues to believe that a statutory inspector general is needed to assure independence for Justice audits and internal investigations.

Contents

Executive Summary		2
<hr/>		
Chapter 1		8
Introduction	Inspector General Act	8
	Mission and Organization of Justice	11
	Objectives, Scope, and Methodology	11
<hr/>		
Chapter 2		14
Audit and Internal	The Roles of Justice Audit and Internal Investigation	14
Investigations	Units	
Functions	Independence of Justice Audit and Internal Investigations	17
	Units	
	Coordination of Justice Audits and Investigations	19
	Audit Follow-Up at Justice	20
	Characteristics of Statutory IGs	20
<hr/>		
Chapter 3		24
Justice's Concerns	Justice's Concerns	24
Regarding	Considerations for the Congress: IG Responsibilities	28
Establishment of a	Considerations for the Congress: IG Structure	29
Statutory IG	Conclusions	32
	Recommendation	32
	Agency Comments	32
<hr/>		
Appendixes	Appendix I: Request Letter From the Senate Committee on Governmental Affairs	34
	Appendix II: Department of Justice Organizational Chart	36
	Appendix III: Department of Justice Audit and Internal Investigations Units	38
	Appendix IV: Comments From the Department of Justice	40
<hr/>		
Figures	Figure 2.1: Department of Justice Audit Organization	15
	Figure 2.2: Department of Justice Internal Investigations Organization	16
	Figure 2.3: Typical Statutory IG Organization	22
	Figure 3.1: Centralized IG Organization	30
	Figure 3.2: Department of Justice IG Organization Patterned After DOD IG	31

Abbreviations

BOP	Bureau of Prisons
DEA	Drug Enforcement Administration
DOD	Department of Defense
FBI	Federal Bureau of Investigation
GAO	General Accounting Office
HEW	Department of Health Education and Welfare
HUD	Department of Housing and Urban Development
ID	Inspections Division
IG	Inspector General
INS	Immigration and Naturalization Service
JMD	Justice Management Division
OFIA	Office of Field Inspection and Audit
OI	Office of Inspections
OII	Office of Internal Inspections
OPEA	Office of Program Evaluation and Audits
OPR	Office of Professional Responsibility
PID	Planning and Inspection Division
USDA	United States Department of Agriculture
USMS	United States Marshals Service

Introduction

The Congress passed the Inspector General Act of 1978 in order to centralize the leadership of 12 agencies' audit and investigative functions under senior agency officials responsible only to the agency heads or deputies, and to have the independence needed to detect government fraud, waste, and abuse. The Departments of the Treasury and of Justice opposed inclusion under the Act and were not included in the 1978 Act or other legislation which has established statutory inspectors general in eighteen departments and agencies. Legislation to include them has, however, been considered periodically.

The Chairman of the Senate Committee on Governmental Affairs requested that we review the organization and operations of Treasury's and Justice's internal audit and investigation functions to determine how they differ from those authorized under the Inspector General (IG) Act, and make recommendations on the need for statutory inspectors general at those departments. (See appendix I.) A separate report will be issued on our review of Treasury.

Essential to our review of Justice's internal audit and investigative functions is an understanding of the impetus and rationale for establishing statutory inspectors general. That information, plus a brief description of the Department of Justice, follows. Our objectives, scope, and methodology for this review are presented at the end of this chapter.

Chapter 2 describes the audit and investigative functions at Justice and how they operate, and briefly describes the statutory IG offices at three federal agencies. Chapter 3 presents Justice's objections to having a statutory inspector general and our assessment of those objections. It concludes with matters for the Congress to consider on the question of establishing a statutory inspector general at Justice and our recommendation on the issue.

Inspector General Act

The inspector general concept as set forth in the 1978 Inspector General Act, which we support, consolidates auditing and investigative responsibilities under a single senior official who reports directly to the agency head or officer next in rank below the head. This results in independent and objective units which conduct and supervise audits and investigations relating to programs and operations of their respective departments and agencies.

The Inspector General Act of 1978 was passed following a series of events which emphasized the need for more independent and coordinated audits and investigations in federal departments and agencies. First, in 1974, the Secretary of Agriculture abolished its administratively established Office of Inspector General. This action clearly demonstrated the impermanent nature of a nonstatutory inspector general. Later, in 1974 and 1975, a study by the House Intergovernmental Relations and Human Resources Subcommittee, Committee on Government Operations, disclosed inadequacies in the internal audit and investigation procedures and resources in the Department of Health, Education and Welfare (HEW), now the Department of Health and Human Services. The need to deal more effectively with the danger of loss from fraud and abuse in HEW programs led to establishing the first statutory Office of Inspector General in 1976.

In 1977, the subcommittee began a comprehensive inquiry to determine whether there was a need at other federal departments and agencies for similar statutory Offices of Inspector General. Their study revealed serious deficiencies in a number of departments' and agencies' audit and investigative efforts, such as:

- a lack of independence exhibited by the fact that auditors and investigators reported to officials who had responsibility for programs that were being audited,
- no central leadership of auditors and investigators, and
- lack of procedures to ensure that agency heads and the Congress are kept fully and currently informed of serious problems discovered in the operation of agency programs.

As an initial effort to correct these deficiencies, the IG Act of 1978 established 12 additional statutory Offices of Inspector General to be patterned after the one at HEW. Other legislation has been passed to establish statutory inspectors general in five additional departments and agencies.¹

¹The Inspector General Act of 1978, as amended, is contained in Title 5, appendix, of the United States Code. The Act established inspectors general in 12 agencies: the Departments of Agriculture, Commerce, Housing and Urban Development, the Interior, Labor, and Transportation; the Community Services (now defunct), National Aeronautics and Space, Small Business, General Services, and Veterans' Administrations; and the Environmental Protection Agency. The Act was amended in 1979 to include the Department of Education; in 1981 to include the Agency for International Development; and in 1982 to include the Department of Defense. Other legislation created inspectors general in the Departments of Energy, and Health and Human Services. The Foreign Services Act of 1980 created a statutory IG at the Department of State.

The Inspector General Act consolidated the audit and investigative responsibilities of each department or agency under the direction of one senior official—the inspector general—who reports to the head of the agency or an official next in rank below the agency head. This assures that auditors and investigators are not reporting to the officials who are directly responsible for the programs under review.

These statutory inspectors general are appointed by the President, by and with the consent of the Senate, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, financial analysis, law, management analysis, public administration, or investigations. The Act states that, with the exception of the Department of Defense, neither the agency head nor the officer next in rank below the agency head shall prevent or prohibit the inspector general from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation. The Secretary of Defense was provided, under section 8 of the Inspector General Act of 1978 as amended, the authority to halt audits and investigations within the Department in the interest of national defense. However, in any case where an audit or investigation is halted, the Department of Defense IG must report such action to the appropriate congressional committees, and the Secretary must submit a statement of reasons to the same committees.

Statutory inspectors general are responsible for (1) conducting and supervising audits and investigations, (2) providing leadership and coordination and recommending policies to promote economy, efficiency, and effectiveness, and (3) detecting fraud and abuse in programs and operations of their agencies.

The Act requires inspectors general to comply with the generally accepted audit standards established by the Comptroller General of the United States for audits of federal establishments, organizations, programs, activities, and functions. One of these standards requires auditors and audit organizations to be personally and organizationally independent and to maintain the appearance of independence so that opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties.

Additionally, the Inspector General Act requires the inspectors general to prepare semiannual reports to the Congress which summarize the activities of the IG during the preceding 6-month period. The reports are

forwarded to the head of the department, who is responsible for transmitting the reports to the appropriate congressional committees.

Mission and Organization of Justice

The mission of the Department of Justice is to represent the government in legal matters; ensure healthy business competition; protect the public from criminals and subversion; enforce drug, immigration, and naturalization laws; prevent and detect crime; and prosecute and rehabilitate offenders. It has over 61,000 employees and, in fiscal year 1985, had a budget of \$3.67 billion. The Attorney General of the United States, who is appointed by the President and confirmed by the Senate, heads the agency.

Justice's operations can be divided into five major functional areas—litigation and prosecution, investigation, adjudication, law enforcement, and corrections. Justice attorneys represent the government in litigation and prosecution through one of these six divisions: civil, criminal, anti-trust, civil rights, tax, and land and natural resources. The other work of Justice is carried out through these five bureaus: the Bureau of Prisons (BOP), the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), the Immigration and Naturalization Service (INS) and the United States Marshals Service (USMS). (An organizational chart for Justice is found in appendix II.)

Objectives, Scope, and Methodology

As agreed upon with the Committee staff, the objectives of this review were to:

- review the organization and operation of the Justice IG-type audit and investigative activities to determine how these offices differ from those authorized under the Inspector General Act of 1978,
- address Justice's objections to establishing a statutory IG at Justice,
- provide information on different methods of structuring a Justice IG, and
- offer a recommendation on whether there should be a statutory IG at Justice.

In this review we did not assess the adequacy of the work of Justice's audit and investigative groups and their contributions to Justice's management.

We analyzed the Inspector General Act of 1978, other related legislation, previous studies, legislative histories, and congressional hearing reports

to determine the reasons for establishing statutory IGs, their duties and responsibilities, their reporting requirements, types of reports, and report distribution.

We interviewed former and present Justice officials to determine the staffing, funding, and organization of Justice's audit and internal investigations units. We analyzed Justice directives, policies, procedures, workplans, and audit reports to determine the purposes for which the audit and investigations units were established, types of audits planned, the types of reports issued and to whom. We obtained the views of department and bureau-level officials on the establishment of a statutory IG at Justice. We also obtained information on aspects of Justice's operations, such as access to grand jury information, which Justice feels makes it unique and different from other agencies.

We used as criteria the Comptroller General's Standards for Audit of Governmental Organizations, Programs, Activities, and Functions and the Office of Management and Budget's Circular A-73, "Audit of Federal Operations and Programs," and Circular A-50, "Audit Follow-up," to determine if Justice and selected IGs conform to accepted standards and procedures relative to organizational independence and audit follow-up.

We interviewed selected IG officials at the Departments of Agriculture (USDA), Defense (DOD), and Housing and Urban Development (HUD), whose organizations represent examples of statutory IG offices. We requested that these statutory IGs and Justice's audit and internal investigations officials provide information about their respective missions, staffing, budget, independence, audit and investigative responsibilities, reporting requirements, relationships with top agency management, and status within their agencies. We used this information to determine the differences between Justice's audit and internal investigations units and those authorized by the Inspector General Act. Our review did not include an assessment of the adequacy of the work of the IGs' audit groups.

We conducted our review at the Department of Justice, Washington, D.C., and at Justice's components in Falls Church and McLean, Virginia. Our review covered the period July 1984 to March 1985 and was conducted in accordance with generally accepted government auditing standards.

We provided copies of our draft report to the Department of Justice on June 28, 1985, for comment. Justice's primary concerns are addressed in

chapter 3 of the report, and the complete comments, received on October 16, 1985, are included as appendix IV.

Audit and Internal Investigations Functions

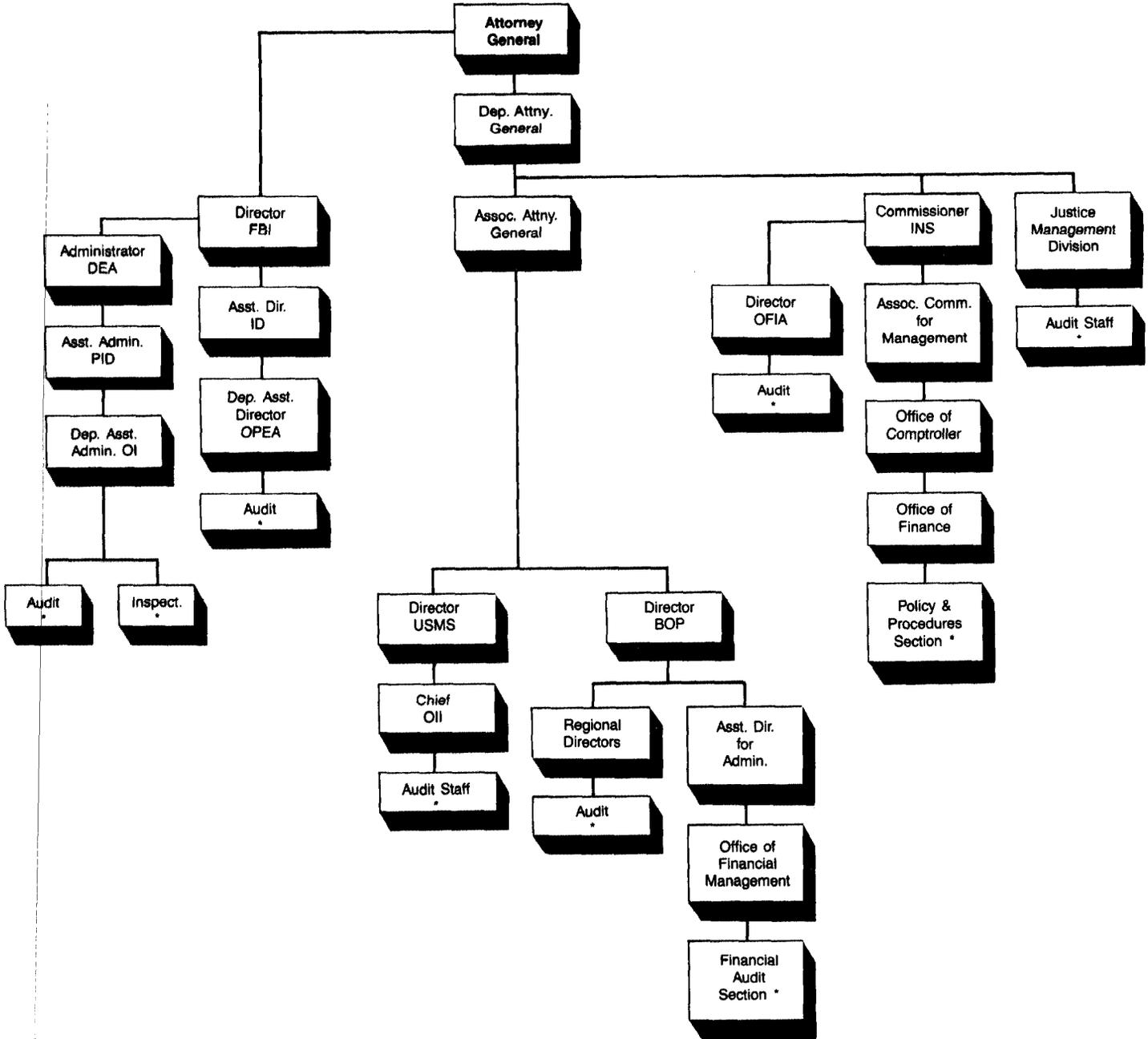
The fundamental responsibilities of agency management include the independent assessment of its programs and operations to determine whether they meet the intended objectives in an efficient and economic manner, and a full rendering of its activities to the public. The feedback obtained through this process gives management essential information it needs to carry out other basic management functions such as planning, staffing, taking needed corrective actions, and redirecting program operations. Effective audit and internal investigations can meet these needs.

The Department of Justice believes that its structure of audit, evaluation, and investigative units fulfills this need. Their functions are described in this chapter and are followed by a brief description of the statutory IG offices at selected federal agencies.

The Roles of Justice Audit and Internal Investigation Units

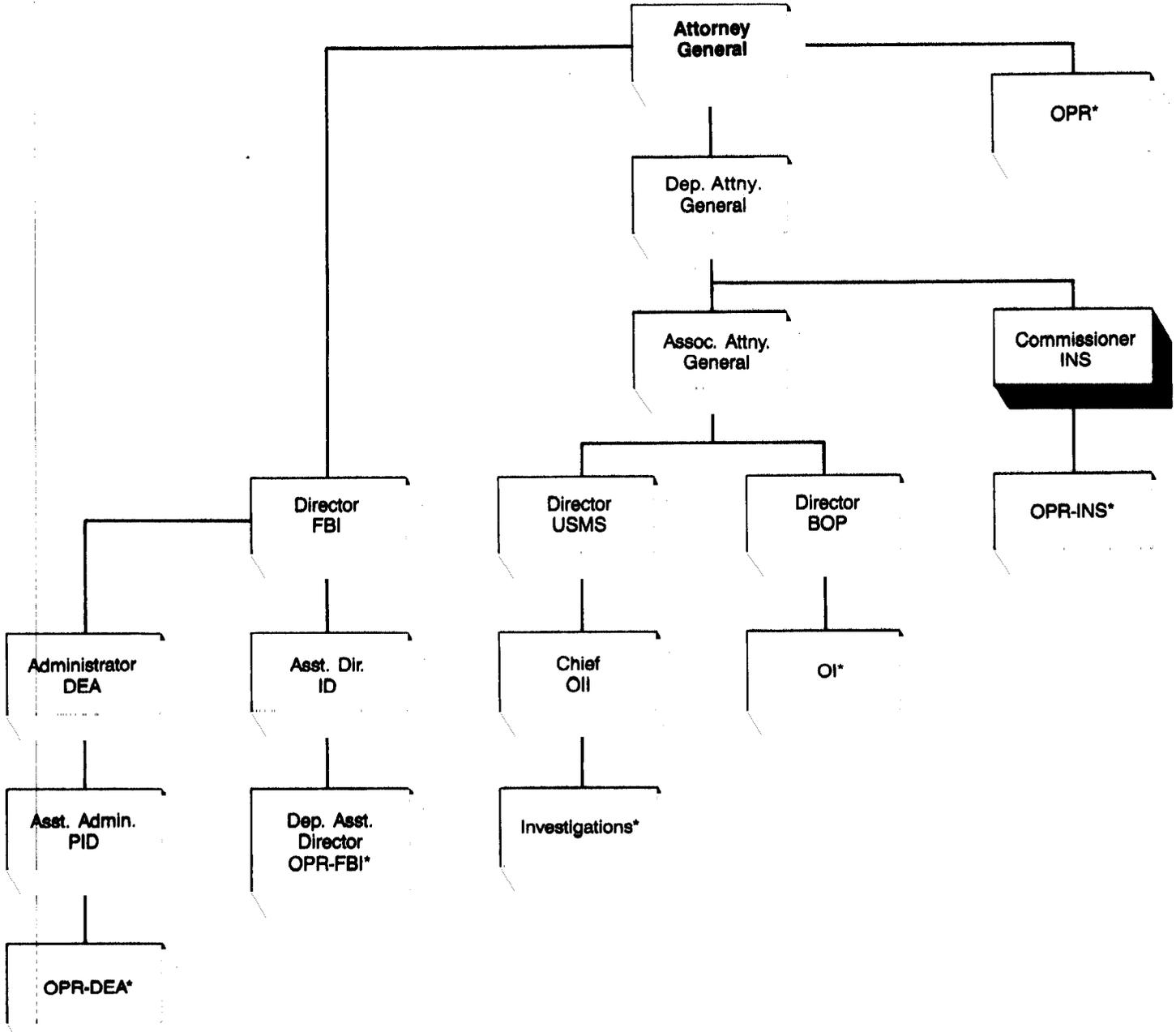
Justice managers are assisted in assessing the agency's programs and operations by 15 separate audit and internal investigations units. (See appendix III.) There is one audit group and one internal investigations unit with departmentwide responsibilities. The eight other audit groups and five internal investigations units are located in the five bureaus and have responsibility for audits and investigations within their particular bureaus. Figures 2.1 and 2.2 illustrate the location of these units within Justice.

Figure 2.1: Department of Justice Audit Organization



*Audit Groups

Figure 2.2: Department of Justice Internal Investigations Organization



*Internal Investigations Units

Collectively, these units employ about 329 professional and 32 support staff. Their fiscal year 1985 funding figures are not a separate line-item, but rather are included in each bureau's general request.

The only departmentwide audit group, the Audit Staff, is located in the Justice Management Division (JMD) and is responsible for conducting audits in JMD, the litigating divisions, and throughout the department on departmentwide issues. It is also responsible for formulating, implementing, and reviewing Justice-wide audit policies, standards, and procedures, and overseeing the eight bureau-level audit units. The Audit Staff conducts or coordinates the audits of organizations performing under contracts, grants, or other agreements with Justice. Each of the other eight bureau-level audit units conducts financial and compliance audits, or economy and efficiency reviews within its own bureau.

The departmentwide internal investigations unit, the Office of Professional Responsibility (OPR), investigates alleged abuses of prosecutorial discretion, conducts investigations in the litigating divisions and of senior Justice officials, and reviews all investigations concerning allegations of criminal or ethical misconduct against any Justice employee. It also serves as a liaison with the criminal division after detection of waste, fraud, and error in Justice operations; reviews allegations of reprisals against "whistleblowers;" and monitors the activities of the five bureau-level internal investigations units.

The bureau-level internal investigations units investigate allegations of criminality and serious misconduct by employees of the respective bureaus and maintain liaison with OPR. The bureau-level units also monitor disciplinary action taken against the employees of their respective bureaus.

Independence of Justice Audit and Internal Investigations Units

The Comptroller General's standards for audit work emphasize that:

"In all matters relating to the audit work, the audit organization and the individual auditors, whether government or public, must be free from personal or external impairments to independence, must be organizationally independent, and shall maintain an independent attitude and appearance."

Impairments to an auditor's or investigator's independence may result from previous or anticipated involvement in the management of the area under review, preconceived ideas of or personal relationships with the individuals or groups under review, or career considerations.

Although there are, as yet, no governmentwide standards for investigative work, the interim quality standards for federal offices of inspectors general, developed by the President's Council on Integrity and Efficiency, indicate that investigations, like audits, should be carried out by personnel and organizations that are also independent of department operations.

The 13 audit and investigative units of Justice that are organizationally part of the bureaus they review are not organizationally independent. We found that the organization and operation of these units could affect the impartiality of their staffs.

For example, the reports of the eight audit units (located in the five Justice bureaus) are referred through the bureau hierarchy to the bureau director. The bureau director is responsible for the programs and operations reviewed by the audit units. There is no assurance that the Attorney General is advised of the work of these audit units. If a report is forwarded to the Attorney General, it must pass through anywhere from three to six officials before it reaches him. (See figure 2.1.)

Reports of the five investigative units (located in the five Justice bureaus) are forwarded to their respective bureau directors; summaries of significant items are forwarded to OPR monthly for its information and whatever action it deems necessary. An impairment exists where, in some instances, investigative unit personnel rotate from conducting the bureau's basic mission, to conducting integrity investigations of former or future coworkers, to again participating in the bureau's mission. Again, since the five bureau-level investigative units determine what items are significant enough to report to OPR, there is no assurance that the Attorney General is promptly apprised of the work of the investigative units, and, unless an investigator ignores normal reporting channels and goes directly to OPR, a report would have to pass through as many as six officials to reach the Attorney General. (See figure 2.2.)

The degree of organizational independence of the departmentwide audit group (the Audit Staff) is also questionable. Although reports of the Audit Staff on activities in the JMD are submitted to the Attorney General, the director of JMD supervises and evaluates the auditors and has responsibility for the activities which are subject to audit.

The OPR reports directly to the Attorney General and is the only investigative or audit unit of Justice with such a degree of organizational independence.

In summary, we found that with the exception of the OPR, the existing placement and reporting processes of the audit and internal investigations units at Justice create (1) the appearance that the units are part of a program entity and not truly independent and (2) the potential for the staff to be placed in situations where career considerations or personal allegiances might affect their objectivity.

Coordination of Justice Audits and Investigations

Office of Management and Budget, Circular No. A-73, revised, maintains that audit effectiveness is enhanced by central coordination of an agency's audit activities. It states:

"...the operation or policy control of all audit activities in a department or agency should be under the direction of a single individual. Close coordination should be maintained between the audit organization, the designated audit followup official, investigative units, and other management review activities."

At Justice, the eight bureau-level audit groups operate solely within the bureau to which assigned and do not routinely coordinate their audit work with each other. The Audit Staff has responsibility for establishing Justice's audit policy as well as for coordinating audits. It coordinates its work with bureau-level audit groups to the extent that it conducts a departmentwide survey of target audit areas and considers the work of the bureau-level audit groups during the preparation of its own annual work plan. Individual audit reports, however, are not exchanged.

The five internal investigations units, located within the five bureaus they investigate, submit monthly status reports to the OPR. OPR becomes involved only where potential criminality is significant or questionable investigative practices are indicated.

In summary, we found that there is no one person or office responsible for coordinating audits and investigations at Justice. The responsibilities of both the Audit Staff and OPR are limited to the actions and circumstances noted above.

Audit Follow-Up at Justice

Office of Management and Budget Circular A-50, revised, states:

"Audit followup is an integral part of good management, and is shared responsibility of agency management officials and auditors. Corrective action taken by management on resolved findings and recommendations is essential to improving the effectiveness and efficiency of Government operations. Each agency shall establish systems to assure the prompt and proper resolution and implementation of audit recommendations.... Agency heads are responsible for (1) designating a top management official to oversee audit followup, including resolution and corrective action."

JMD's Audit Staff has designated regional follow-up officials to ensure that recommendations from its departmentwide audits are implemented. However, these follow-up officials do not assure implementation of the audit recommendations of the eight bureau-level audit groups. Each of Justice's nine audit groups has its own independent audit follow-up system, and each is responsible for tracking implementation of its own audit recommendations. No Justice official monitors the status of all audit recommendations throughout the agency.

Characteristics of Statutory IGs

DOD's decentralized IG organization provides audit and internal investigative oversight and policy guidance to individual audit and investigative organizations within the military services. HUD has a centralized IG solely responsible for all agency audits and investigations. USDA has a centralized IG solely responsible for all agency audits and most of its investigations. Despite different organizational structures, offices of statutory IGs at federal departments and agencies share the common, statutorily based characteristics of being organizationally independent, providing central leadership and coordination, and reporting directly to the agency head and the Congress.

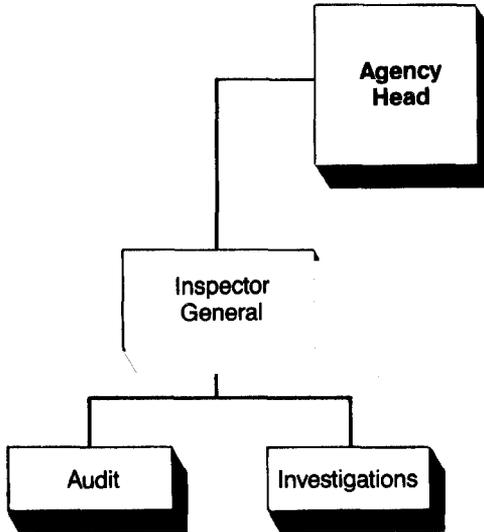
Although part of their respective agencies, all statutory IG offices cannot be abolished by an agency head because they are organizationally independent. This independence is evident in statutory IGs' budgeting, staffing, and reporting processes. For example, budget requests for the USDA IG are developed by the IG and submitted directly to the agency head, and those of the IGs at DOD and HUD are developed by the IGs and submitted directly to agency heads through department-level review panels. At Justice, funding and staffing decisions for audit and investigation are usually made by bureau-level officials who bear direct program responsibility for the areas subject to audit. The funding and staffing levels for Justice's audit and investigation units, therefore, are not identifiable in the budget process.

Staff members are permanently assigned to the statutory IG offices and do not rotate between program operations and program review functions. Since they do not review the entity to which they are assigned, their opinions, conclusions, judgments, and recommendations should be impartial and will be viewed as such by knowledgeable third parties. Furthermore, statutory IG staffs have free access to all agency records and files. The only statutory exception to this is the DOD IG, who can be restricted from matters involving national security by the Secretary of Defense. However, the DOD IG is required to notify appropriate congressional committees of the restrictions, and the Secretary of Defense is required to submit a statement of his reasons to the same committees.

Statutory IG offices are required to be functionally independent of the programs, operations, and entities they review and to report to a single individual who has direct access to the agency head. (See figure 2.3.) With audit and investigative activities directed and closely monitored in this manner and with the IG's requirement for semiannual reporting to the Congress, top agency officials and the Congress are better assured of having the information necessary to assess agency programs and operations.

Statutory IGs are required to submit semiannual reports to the agency head and the Congress to ensure both are being fully and currently informed about agency operations and the status of audit recommendations. The HUD IG, for example, even included in the semiannual reports the names of responsible program officials who failed to implement audit recommendations in a timely manner as an additional incentive for quick resolution.

Figure 2.3: Typical Statutory IG Organization



Justice's Concerns Regarding Establishment of a Statutory IG

Representatives of the Department of Justice have appeared on several occasions before committees of the Congress—in both the House and the Senate—to express what Justice considers to be serious concerns about the extension of the Inspector General Act of 1978 in any form to Justice. Justice's opposition centers around concern over the impact of an IG on departmental law enforcement operations and the ability of the Attorney General to exercise broad-based discretion in directing Justice's investigative, prosecutorial, and litigation functions.

Specifically, Justice is concerned its inclusion under the Inspector General Act would

- superimpose the IG over the authority of the Attorney General,
- allow an independent IG to interfere with or jeopardize ongoing external investigations and prosecutions, and
- require the IG to disclose sensitive or classified information.

Justice has also expressed concerns regarding the need for a statutory IG because it maintains its system of audit and internal investigations parallels that of existing statutory IGs, and the structure of a statutory IG office could eliminate the bureaus' and divisions' capacity for self-assessment.

Justice's Concerns

Justice has testified that its inclusion under the 1978 Inspector General Act would superimpose an IG over the authority of the Attorney General and that a diffusion of the Attorney General's responsibilities to investigate, prosecute, and institute litigation would result.

For example, Justice's program operating responsibilities—to investigate, prosecute, institute, litigate, and settle law suits—concentrate on law enforcement activities. Justice believes that the IG's responsibilities to provide both policy direction for investigations and for conducting investigations in an agency, as required by the Act, would conflict with responsibilities committed to the Attorney General under present law. While it is true that existing law does not explicitly address the situation raised by Justice, we believe that in light of the primary responsibilities of IGs under the IG Act and the existing language of the Act which precludes IG assumption of agency program operating responsibilities, the potential ill effects anticipated by Justice are unlikely to occur.

The Inspector General Act sought to create independent, objective offices (1) to conduct and supervise audits and investigations relating to

departmental programs and operations, (2) to provide leadership and coordination, to recommend policies for promoting economical, efficient, and effective operations, and to prevent and detect fraud, waste, and abuse, and (3) to inform the agency heads and the Congress of serious problems in a department's programs and operations. The IGs' role is advisory; IGs were not given the authority to direct changes in a department's programs and operations.

The Act specifically precludes an agency head from giving the IG any information that is otherwise restricted by existing statute or regulation,² prohibits the transfer of any program operating responsibilities to the IG,³ and requires the IG to comply with standards established by the Comptroller General for audits of federal establishments, organizations, programs, activities, and functions.

The Comptroller General standards require that audit organizations and individual auditors be organizationally independent and free from such impairments to that independence as may result from personal and professional involvement in the operations or programs of the entity being audited. Therefore, the IG is to promote efficiency and effectiveness in a department's programs and operations and to alert the agency head when serious problems arise, rather than to become involved in Justice's law enforcement efforts.

Since its mission includes enforcement of federal law through investigation, prosecution, and litigation, Justice believes that the Act would allow the IG to interfere with or jeopardize its ongoing investigations and prosecutions. Justice argues that an IG who can render judgments on the exercise of prosecutorial discretion and other actions by Justice's attorneys (such as the propriety of proceeding with an active investigation or litigation) would, in effect, be exercising authority closely paralleling that of the Attorney General and would diminish the flexibility and candor they feel is necessary for the proper exercise of prosecutorial discretion. As previously mentioned, we do not believe this is likely to occur because the involvement of an IG in the exercise of legal judgment would be only in reviewing cases to determine whether they were conducted efficiently and in accordance with established policy and in an advisory role to the Attorney General. For example, it would be consistent with the purpose of the IG Act to examine whether the cases were

²5 U.S.C. Appendix, Sec. 6(b)(1).

³5 U.S.C. Appendix, Sec. 9(a)(2).

processed within the time frames established by law or policy or whether the required approvals were obtained.

Justice's concerns raise the question of whether the IG should be precluded from reviewing the legal judgments or prosecutorial discretion exercised. For example, should an IG comment on an attorney's decision regarding the adequacy of evidence to litigate a case or on whether granting immunity to one defendant in return for testimony was necessary to obtain a conviction against another defendant?

We believe that reviews of prosecutorial discretion are an appropriate role for Justice's OPR and should be exercised for the Attorney General primarily by that office. However, we do not believe that the IG should be precluded from conducting reviews of this nature if a unique set of circumstances warrants further review.

Justice's concern over the IG's disclosure of sensitive or classified information should be allayed by provisions of the Inspector General Act prohibiting the public disclosure of information that is part of an ongoing criminal investigation⁴ or that is otherwise prohibited from disclosure by law or executive order.⁵ For example, under Rule 6(e) of the Federal Rules of Criminal Procedure, disclosure of grand jury material is precluded unless so ordered by the court.

The 1982 amendment to the Inspector General Act provides specific provisions to protect sensitive information from unauthorized disclosure. We believe the language in the amendment is sufficiently broad to protect information in the Department of Justice.

However, the Congress did provide the Secretary of Defense an additional legislative provision to protect national security. Section 8 of the Inspector General Act allows the Secretary of Defense to prohibit certain IG audits and investigations to preserve national security interests. The IG must report any such action to the appropriate congressional committees, and the Secretary must submit a statement on the reasons for his action to the same committees. If the Congress believes that similar protection is needed for Justice due to its law enforcement responsibilities, the Attorney General could be given powers similar to those of the Secretary of Defense.

⁴5 U.S.C. Appendix, Sec. 5(e)(1)(C).

⁵5 U.S.C. Appendix, Sec. 5(e)(1)(A).

Justice maintains that since it has given policy oversight and departmentwide jurisdiction to Justice Management Division's Audit Staff and the Office of Professional Responsibility, its existing system of audit and internal investigations parallels those of the statutory IGs and, therefore, establishing a statutory IG at Justice is unnecessary.

As has been discussed in the previous chapter, our review found that the structure and management of Justice's audit and internal investigations units do not provide either the degree of independence or management oversight provided statutory IGs by the Inspector General Act of 1978. For example, Justice's bureau-level audit groups review the operations of the entities to which they are assigned, report to officials who have responsibility for the areas audited, and do not have the assurance that top agency officials are made aware of the problems they identify.

With respect to internal investigations, Justice's OPR does report to the Attorney General. However, it only becomes actively involved in bureau-level investigations when it becomes aware of allegations of a violation of criminal law, abuse of prosecutorial discretion, or conflict of interest. Additionally, the effectiveness of OPR is dependent on the strong support of the Attorney General for its authority. This is a significant difference from the independence afforded an inspector general by statute. The bureau-level units present an even greater appearance of lack of independence since they investigate persons in the entities to which they are assigned and report primarily to officials having responsibility for the persons investigated. In some units, staff rotate between performing this internal review function and conducting the entity's basic program responsibility, which could impair impartial judgment and independence.

In addition to the primary concerns discussed above, Justice officials maintain that the creation of an IG will adversely affect agency operations by eliminating certain management functions and by destroying the employees' incentive to perform as well as they can. The management functions which Justice contends creation of an IG office will obscure are the right of a bureau director to assess his/her own operations and the review of a U.S. Attorney's prosecutorial discretion. We believe self-assessment is rightly part of a director's operating responsibility and should be conducted by agency management. It does not, however, eliminate the need for independent audit such as that provided by the IG Act. We believe review of an attorney's prosecutorial discretion is the primary responsibility of the Office of Professional Responsibility.

The apprehension of some officials that establishing an IG will result in a decline in the quality of audits and internal investigations comes from the belief within Justice that IG staff would no longer have a direct personal interest in seeing the target areas improved and will be less inclined to do a good job. We believe having a direct personal interest in the area under review increases the potential for compromise of an auditor's or investigator's independence and may affect his/her impartiality.

Considerations for the Congress: IG Responsibilities

If the Congress amends the Inspector General Act of 1978 to add Justice to those agencies already having a statutory IG, it may want to consider including in the legislation language that addresses some of Justice's concerns. We believe this can be accomplished without hindering the IG in fulfilling the primary objectives of the IG Act. For example, part of Justice's mission is to investigate such matters as organized crime, illegal drug sales, and subversion. Justice officials fear that legislation creating an IG to conduct audits and "investigations" could be interpreted as allowing the IG to become involved in these highly sensitive, external investigations. Therefore, to avoid any possible confusion as to the investigative role of a Justice IG, the Congress may wish to use the phrase "internal investigations" instead of "investigations."

Similarly, the Congress may wish to incorporate language that strikes a balance between the scope of the IG's activities and the need for Justice to protect the confidentiality of information needed to successfully investigate and litigate cases. The Attorney General could be authorized to excise such information from requested files if the Attorney General determines the IG's access to and disclosure of the information would jeopardize the success of an ongoing investigation or litigation, or the welfare of informants or protected witnesses. The Attorney General could be authorized to prohibit the IG from initiating or proceeding with an audit or investigation if the Attorney General determines excising the information is not feasible. The IG, on the other hand, could be authorized to decline or terminate an audit or investigation if the Attorney General's excising of information would effectively preclude the IG from doing the audit or investigation. Statements supporting such determinations should be submitted within 30 days to the appropriate congressional committees. This authority is similar to that provided the Secretary of Defense under section 8 of the Inspector General Act of 1978, as amended.

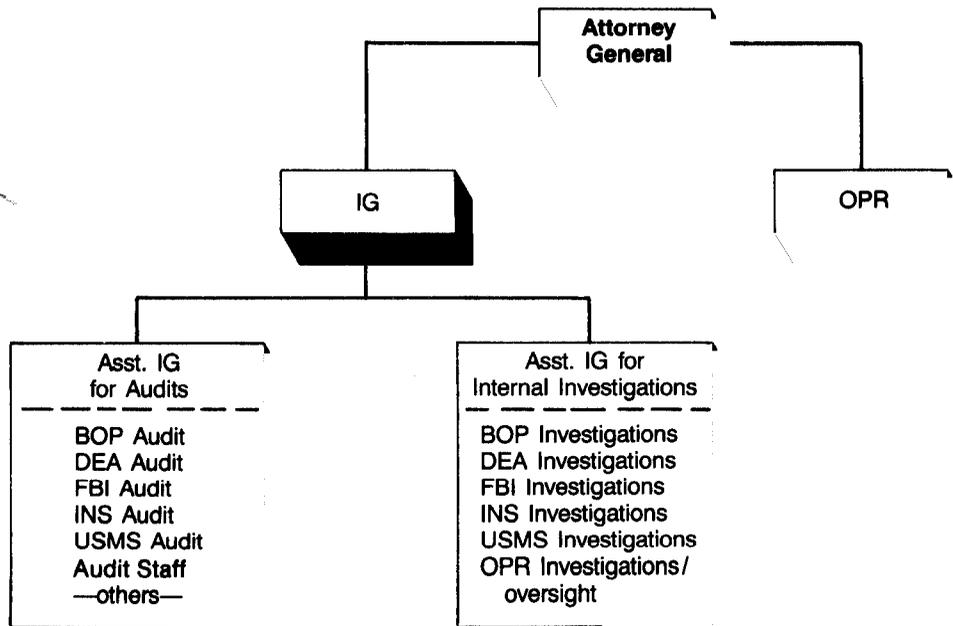
The Congress may also wish to address the uncertainty at Justice as to whether agency officials can evaluate their respective programs or whether an IG would have this function exclusively. In previously proposed legislation, the Evaluation Staff in the Justice Management Division has been designated to be transferred to the IG's office. Justice maintains the Evaluation Staff performs a management assistance function and, therefore, it does not properly belong with the IG and should not be transferred. We agree program managers should have the capacity to evaluate their operations. Where these assessments are advisory and seek to evaluate program impact, plan future strategies, or identify policy options, they form part of the manager's operating responsibility and are appropriate management functions. They do not, however, eliminate the need for independent assessments to determine whether the programs are meeting intended objectives, are being carried out in conformity with law and regulations, or are being evaluated based on appropriate, reliable data.

Considerations for the Congress: IG Structure

The agency components specified for transfer to proposed inspector general organizations by inspector general legislation affect the agency IG structure and operation. Traditionally, the Inspector General Act has placed all of an agency's audit and investigative groups under the IG. However, prior legislation introduced to establish an IG at Justice, if enacted, would not have included all audit and investigative groups and would have resulted in only part of the agency having been placed under direct IG oversight. The Congress may wish to consider various alternatives for inclusion of audit and investigative groups selected for placement under a Justice IG.

In an IG organization similar to those created in 12 agencies by the 1978 Act, audit staffs would be transferred from the Justice Management Division and the five bureaus to work for and report to the IG. (See figure 3.1.) Portions of evaluation or inspection units that currently perform such audit functions as compliance and program results reviews could also be included. Internal investigations staff from the five bureaus and those necessary to perform OPR's investigative oversight and fraud, waste, and abuse functions would also be transferred to work for and report to the IG. OPR's other responsibilities, such as the review of prosecutorial discretion, would remain outside the IG organization.

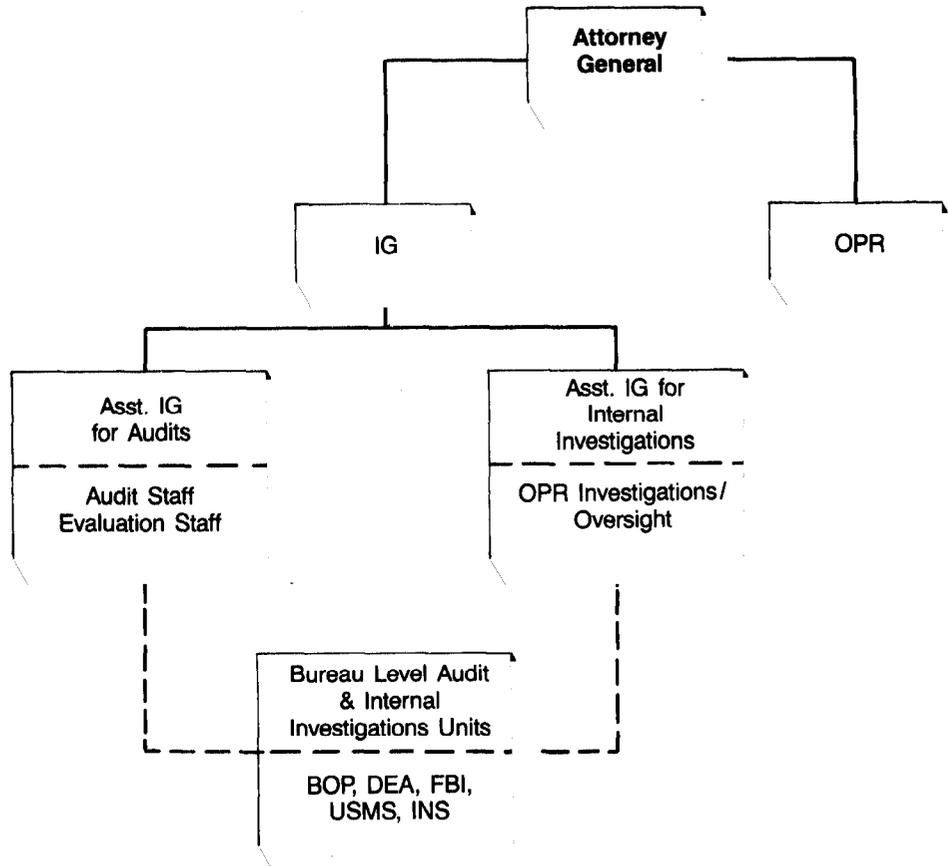
Figure 3.1: Centralized IG Organization



The advantages of this centralized arrangement are (1) central leadership, (2) independent and objective assessments, (3) confidence that audit recommendations will not be ignored, and (4) assurance that the Attorney General and the Congress are being informed of serious problems. This arrangement, however, conflicts with the FBI's and DEA's existing rotational and career development programs by precluding the rotation of staff between program and review functions.

As an alternative, an organization similar to that created for the DOD IG (see figure 3.2) could transfer the JMD Audit Staff and portions of its Evaluation Staff to the IG, along with the investigative oversight function of OPR. These would be responsible for departmentwide audits and oversight of bureau-level audits and internal investigations. The five bureaus would retain their audit and internal investigations units which would continue to report to their respective bureau directors.

Figure 3.2: Department of Justice IG
 Organization Patterned After DOD IG



The main advantages of this organization are it (1) elevates the position and enhances the independence of the Audit Staff and (2) approximates the existing structure at Justice. Yet, while it would provide for leadership and coordination among the various units and would increase assurance audit recommendations were not being ignored, it would not completely eliminate the potential impairments to objective assessments at the bureau level, guarantee IG staff ready access to all areas, or ensure the IG would always be made aware of serious problems that may arise.

Another alternative, which has been considered by the Congress in the past, combines aspects of both concepts and could take many forms. In it, the JMD Audit Staff and audit groups from selected bureaus would be transferred to work for and report to the IG, along with the internal

investigations units of selected bureaus and the corresponding investigative oversight from OPR. These audit and internal investigations units would operate under a centralized concept and exercise an oversight function and policy direction over the remaining, unassigned units. Those units transferred to the IG would provide the five advantages of a centralized arrangement discussed earlier.

Conclusions

We believe that the Inspector General Act of 1978 should be amended to add Justice to those agencies already having a statutory IG. To the extent that the Congress believes some of Justice's concerns warrant attention, these concerns should be addressed in legislation and not by continuing to exclude Justice from the Inspector General Act. Those audit and investigative units selected for inclusion in a Justice IG office will determine the nature of the IG's role within the agency.

Recommendation

We recommend the Congress amend the Inspector General Act of 1978 to establish an Office of Inspector General at Justice in order to strengthen management's control, to promote efficient and effective operation, to combat fraud, waste, and abuse, and to ensure the Attorney General and the Congress are kept fully and currently informed of any serious problems. The Congress may wish to consider various options in structuring such an office and establishing its responsibilities to address Justice's concerns.

Agency Comments

The Department of Justice maintains, as it has since passage of the Inspector General Act of 1978, that any form of a statutory IG at Justice would adversely affect its law enforcement responsibilities. Further, Justice asserts that its audit and investigations units do have the degree of independence and permanence needed to perform effectively and efficiently.

We believe that Justice's concerns over the sensitive nature of its law enforcement responsibilities can be addressed adequately in the development of legislation to establish an IG at the agency. Our review was not intended to assess the performance of Justice's audit and investigative units; however, it did assess the independence and permanence of these units.

We found that Justice's audit and investigation units lacked the independence and permanence provided to inspectors general under the

1978 Act. We believe that independence and permanence are needed for these units to effectively and efficiently perform their work and to ensure that the Attorney General and the Congress are kept fully informed of any serious problems. These goals can best be achieved by an Office of Inspector General mandated by statute.

Request Letter From the Senate Committee on Governmental Affairs

WILLIAM V. ROY, JR. DEL. CHAIRMAN

CHARLES W. PRYOR, AL.	THOMAS F. LACHTON, MO.
TED STEVENS, MAINE	LAWTON CHILES, FLA.
CHARLES MCC. WATKINS, JR. MD.	BAN HUNT, GA.
WILLIAM S. COHEN, MAINE	JOHN GLENN, OHIO
DAVID BURKE, NEBR. LEAF	JOE BASSER, TENN.
WALTER B. RUDEN, N. H.	CARL LEVIN, MICH.
JOHN C. DANFORTH, MO.	JOE BRIDGES, N. CAR.
FRANK RICHMOND, MISS.	DAVID HOFFER, ILL.
WILLIAM L. ARMSTRONG, COLO.	

JOHN H. MONTGOMERY, STAFF DIRECTOR AND CHIEF COUNSEL
 ROBERT S. SHAPIRO, SENIORITY STAFF DIRECTOR AND CHIEF COUNSEL

United States Senate
 COMMITTEE ON
 GOVERNMENTAL AFFAIRS
 WASHINGTON, D.C. 20510

May 18, 1984

The Honorable Charles Bowsher
 Comptroller General of the United States
 U. S. General Accounting Office
 441 'G' Street, N.W.
 Washington, D.C. 20548

Dear Chuck

As you know, the Justice and Treasury Departments do not have statutory Inspectors General although some consideration has been given to the idea. Both agencies do have their own audit and investigative organizations but they are not statutorily established and are not structured in the same manner as the legislatively mandated Inspectors General.

Since my Committee has a continuing, strong interest in the effectiveness of the statutory IG's and has jurisdiction generally over government audit and investigative activities, I believe it would be useful for the GAO to review the organization and operations of the IG-type audit and investigative activities in the Justice and Treasury Departments (i) to determine how these offices differ from those authorized under the Inspector General Act of 1978 and (ii) to provide information to the Congress on the significance of those differences.

I suggest that the GAO review include, but not necessarily be limited to the following major areas:

- Staffing, funding and organization of the audit and investigative offices;
- Principal policy and operational differences between such offices and those authorized under the Inspector General Act of 1978, including the extent of their adherence to prescribed audit and investigative standards and the extent of their cooperation with the Committees and members of Congress;
- GAO's conclusions concerning the effectiveness of such audit and investigative offices and specific recommendations concerning the need to establish statutory Inspectors General in the Justice and Treasury Departments under the provisions of the 1978 Inspector General Act.

Appendix I
Request Letter From the Senate Committee
on Governmental Affairs

I would appreciate it if your staff would contact my Committee to discuss this request before audit work is begun. Your staff may contact Mr. Link Hoewing at 224-4751 for further information on this request.

I appreciate your attention to this matter and look forward to hearing from you in the near future.

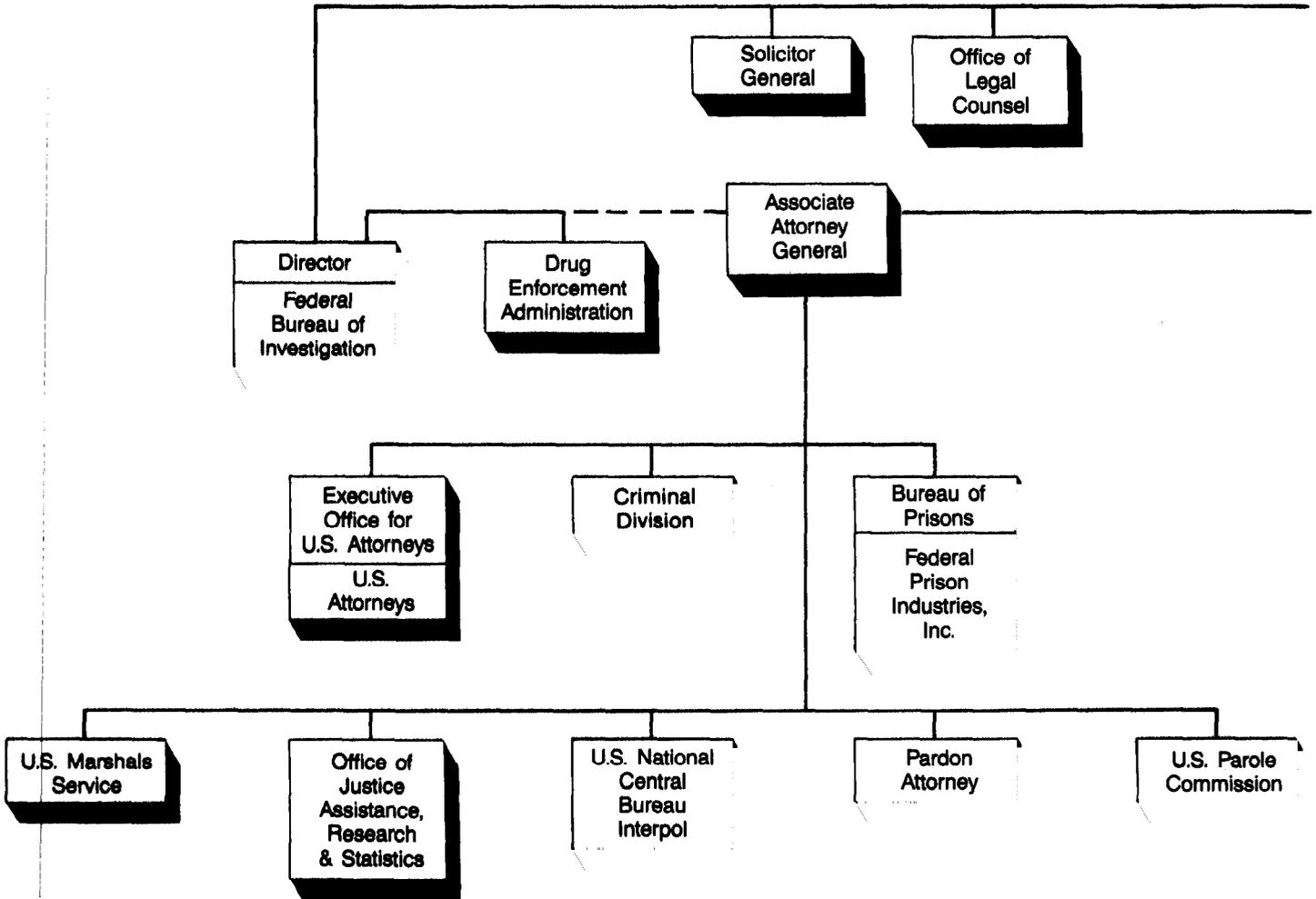
Sincerely,



William V. Roth, Jr.
Chairman

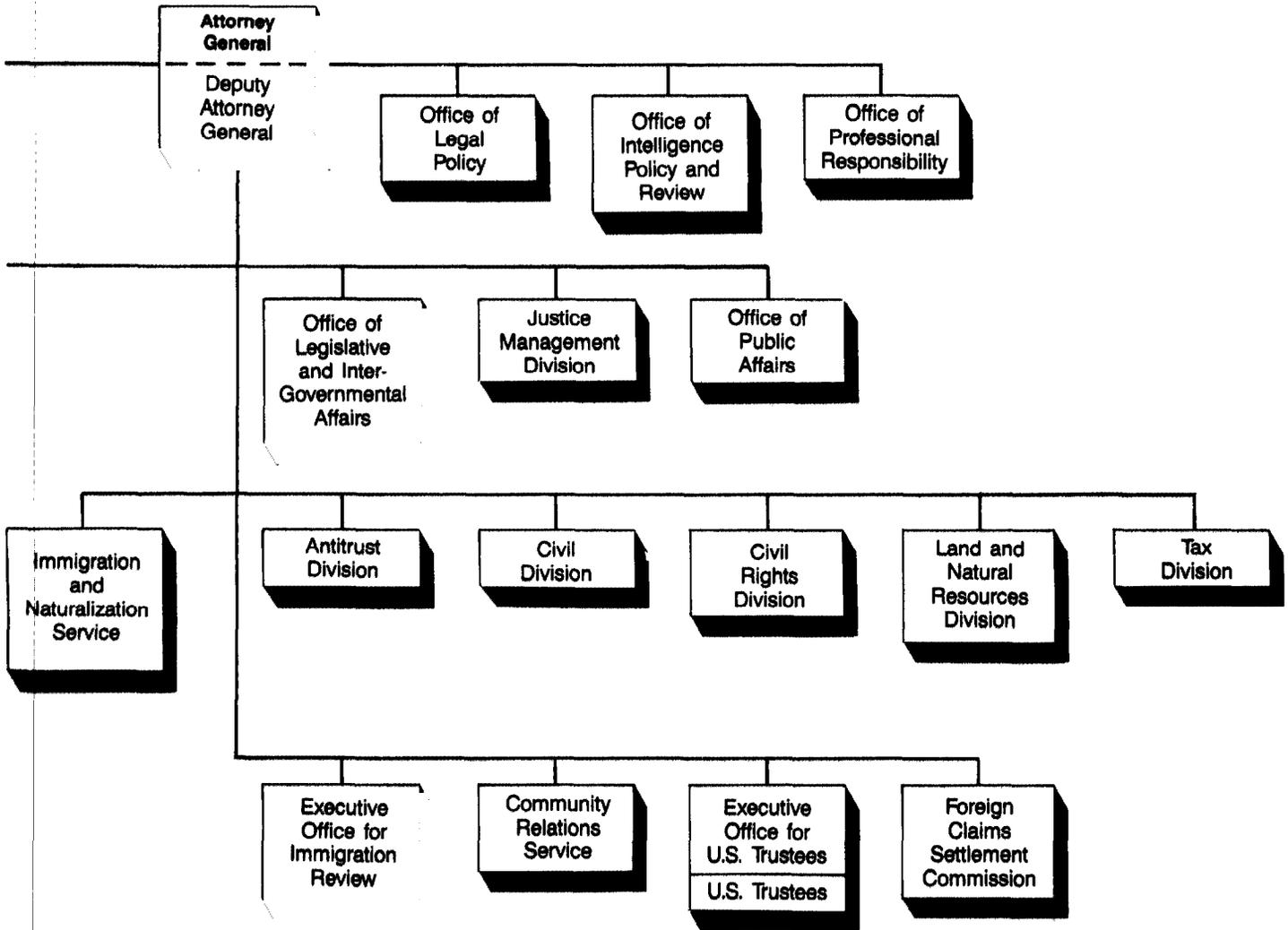
WVR/jlm

Department of Justice Organizational Chart



Source: Department of Justice

Appendix II
Department of Justice Organizational Chart



Department of Justice Audit and Internal Investigations Units

Audit groups ^a	Professional staff	Responsibilities
Justice Management Division - Audit Staff	87	- Program results reviews - Economy and efficiency audits - Financial and compliance audits - Audit policy guidance for Justice
Bureau of Prisons - Staff located in five regional offices - Financial Audit Section, Office of Financial Management	80	- Management and operational audits of BOP institutions
Drug Enforcement Administration - Audit Section, Office of Inspections, Planning and Inspection Division - Inspections Section, Office of Inspections, Planning and Inspection Division	7	- Financial and compliance audits - Inspections of DEA entities
Federal Bureau of Investigation - Audit Group, Office of Program Evaluation and Audit	21	- Economy and efficiency assessments - Survey of compliance with DEA policies and procedures
Immigration and Naturalization Service - Office of Field Inspection and Audit	16	- Financial and compliance audits - Functional area assessments
- Policy and Procedures Section, Office of Comptroller	6	- Field inspection of local offices - Financial and economy and efficiency surveys to detect auditable areas
United States Marshals Service - Office of Internal Inspections	9	- Financial and compliance audits of five regional offices every 2-1/2 years - Financial and fiscal compliance audits - Economy and efficiency audits

**Appendix III
Department of Justice Audit and Internal
Investigations Units**

Internal investigations units	Professional staff	Responsibilities
Department of Justice - Office of Professional Responsibility	6	- Monitors employee misconduct investigations in bureaus - Supervises internal investigations of all offices of U.S. Attorneys and Justice's litigating divisions - Conducts investigations of senior Justice officials, U.S. Attorneys and U.S. Marshals - Directs Justice's efforts to detect fraud, waste, and abuse - Acts as liaison between bureau and Criminal Division in criminal investigations
Bureau of Prisons - Office of Inspections	4	- Investigates allegations of BOP employee misconduct - Monitors BOP field audits
Drug Enforcement Administration - Office of Professional Responsibility	6	- Investigates allegations of DEA employee misconduct and acts of impropriety
Federal Bureau of Investigation - Office of Professional Responsibility	6	- Investigates allegations of FBI employee misconduct - Monitors disciplinary action taken against FBI employees - When requested, conducts criminal investigation of any Justice employee
Immigration and Naturalization Service - Office of Professional Responsibility	42	- Investigates allegations of INS employee misconduct - Maintains integrity awareness program and control system in INS
United States Marshals Service - Office of Internal Inspection	12	- Investigates allegations of USMS employee misconduct

^aAudit staffs are located in the Washington metropolitan area with the exception of JMD's, BOP's, and USMS'. Field staff for JMD and USMS report to headquarters organizations, while BOP field auditors report to regional directors.

Comments From the Department of Justice

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



U.S. Department of Justice

Washington, D.C. 20530

October 16, 1985

Mr. William J. Anderson
Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

This letter responds to your request to the Attorney General for the comments of the Department of Justice on your draft report to the Chairman of the Senate Committee on Governmental Affairs entitled "An Assessment of the Need for a Statutory Inspector General at the Department of Justice." The report recommends that the Congress consider amending the Inspector General Act of 1978 to establish a statutory Office of Inspector General (IG) in the Department by a blanket extension of the 1978 Act, or by establishing a hybrid IG organization and tailoring any legislation creating an IG to accommodate the Department's mission and responsibilities.

As the General Accounting Office (GAO) is aware, ever since the passage of the Inspector General Act of 1978, representatives of the Department have appeared on several occasions before committees of the Congress -- in both the House and the Senate -- to discuss Justice's serious concerns about the extension of the 1978 Act to the Department in any form. Our analysis of the report discloses that the previously expressed concerns of the Department have not been fully addressed. GAO has recognized several of the significant concerns raised by the Department, but has commented on them without making any substantive assessments of their impact on the Department's mission and responsibilities. Without such assessments, there is no demonstrable basis for the Department to consider adoption of the conclusions and recommendations set forth in the report. It appears that the report was designed and presented as a policy statement in favor of an IG, rather than as an audit report presenting facts that support the need for such a major functional realignment.

As for the Department's audit function, any belief that the Departmental Audit Staff is without mandate or authority is unfounded. The Audit Staff has the authority it needs to effectively conduct and coordinate audit efforts within the

See comment 1.

See comment 2.

Appendix IV
Comments From the Department of Justice

Department. 28 C.F.R. 0.75(h) states that the Assistant Attorney General for Administration (AAG/A) is responsible for formulating Departmentwide audit policies, standards, and procedures, and for directing internal audits of all organizations, programs and functions of the Department, and audits of expenditures made under the Department's contracts and grants. DOJ Order 2900.1C charges the Audit Staff with the execution of these responsibilities under the direction of the AAG/A. A broader mandate in the area of audit would be difficult to conceive.

The assertion that the Audit Staff lacks the power or influence within the Department necessary to coordinate its audit activities with other organizations can be refuted by its Departmentwide jurisdiction; by its complete independence in selecting organizations, programs, and functions to be audited and in establishing the scope of such audits; and by its authority to establish and maintain the Department's audit resolution and follow-up tracking system on audit reports until final resolution. The Audit Staff's influence is also demonstrated by the Attorney General's Order (DOJ Order 2900.5) which establishes responsibilities for the detection of fraud or mismanagement on the part of Department officials or employees, and by the fact that results of certain Audit Staff reports go directly to the Deputy Attorney General or to the Attorney General.

See comment 3.

GAO also questions the organizational independence of the Audit Staff. Although the Audit Staff ordinarily reports to the AAG/A in charge of the Justice Management Division (JMD), it does not do so with respect to audits of programs and activities of JMD. DOJ Order 2900.1C states that the results of audits of the JMD will be reported to the Attorney General. Also, as stated above, the Audit Staff can select the subjects of its audits, conduct those audits as it sees fit, and make such reports and recommendations as it deems appropriate.

See comment 4.

Turning to GAO's comments on the Department's internal investigative units, we see a serious misunderstanding by GAO of the investigative reporting structure in the Department. In the text and its accompanying illustrations, GAO repeatedly represents that the internal investigative units are not, or do not appear to be, independent because of the levels of review that their investigative results supposedly go through before they reach the Attorney General. The problem is that GAO failed to indicate that there is a dual reporting structure in place: all misconduct matters are reported to the Office of Professional Responsibility (OPR) and to the head of the component in which the unit is located. Each investigator in each unit, and every internal investigative unit head, is very much aware that normal reporting can be ignored by coming directly to OPR if there is ever a question about the propriety of reporting any aspect of any

misconduct matter to a departmental official. (Moreover, nowhere in its report does GAO refer to the Attorney General's February 16, 1982 memorandum to all employees advising them of their affirmative obligation to notify OPR promptly of allegations of misconduct on the part of Justice Department employees.)

See comment 5.

Further in this regard, it has historically been the case, largely due to every Attorney General's strong support, that the internal investigative units look to OPR as the Attorney General's umbrella component in the Department where all substantive reports can and should be directed, where certain determinations about the course of an investigation can be made, where liaison with the Criminal Division and other investigative entities can be effected, where investigative assistance and advice can be obtained, and where requests for such things as additional funds and other resources can be endorsed and facilitated. Contrary to what GAO asserts, the Attorney General's Office of Professional Responsibility has always served, and continues to act, as the one place in the Department of Justice where any internal investigative unit, any audit unit, or any employee can come for direct, timely, and unfettered access to the Attorney General on matters appropriate for his review.

See comment 6.

We acknowledge that "authority," "independence," "coordination," and "follow-up" are critical elements in an effective audit and investigative operation. However, these elements are being carried out effectively in the Department, and GAO's IG proposal would do little to enhance our audit and investigative capabilities. This is not to say that our audit and investigative activities should not be subject to scrutiny. These activities need to be and will be subjected to periodic evaluation to be sure that they remain effective and meet specific and changing management needs. Should any of the critical elements need strengthening, the mechanisms for strengthening them -- via the issuance of new or revised operational directives, etc. -- already exist and do not require legislative authority.

See comment 7.

In terms of the legal implications of GAO's recommendation, we continue to believe that a blanket extension of the Inspector General Act of 1978 or tailoring of the legislation in any form would not be a prudent decision. Such a reorganization would disrupt the core functions of the Department and undermine the accountability of its officials for the Department's activities.

See comment 8.

The primary issue is that Justice's operations concentrate on law enforcement activities rather than on the monitoring of contracts, grants, and other activities related to the disbursement of federal funds. The functions of the Department to investigate, to prosecute, and to institute, litigate, and settle law suits,

require that broad-based discretion be entrusted to the Attorney General. He must have clear authority and he must be accountable. Any infringement upon the Attorney General's role as the chief law enforcement officer of the Nation will directly undermine his authority and accountability.

The Department's opposition to establishment of an IG function involves three major legal concerns:

1. The Inclusion of the Department of Justice Under the IG Act Would Superimpose an IG Over the Present Authority of the Attorney General

The Nation's chief law enforcement officer is the Attorney General. Within the Office of the Attorney General is the final and ultimate repository of prosecutorial power. The power of investigation, indictment and prosecution is of far greater breadth than any IG. These responsibilities -- to investigate, to prosecute, or to institute litigation, when such is necessary to uphold federal law -- require that broad-based discretion be entrusted to the Attorney General.

A diffusion of this responsibility would result by the extension of the 1978 IG Act to the Department. For example, under the 1978 Act, the role of the IG includes providing policy direction in an agency for investigations and conducting investigations he determines appropriate. The head of an agency may not preclude or interfere with an investigation of an IG. This wide authority of present statutory IGs would impact adversely upon the government's law enforcement efforts if such power was to be lodged in a Justice IG. It would conflict with the very responsibility committed to the Attorney General under present law. This distinction has been recognized by the Congress. At the time it created IGs for other agencies, the Congress declared that it would be "undesirable to impose an Inspector General, who is basically a law enforcement official, on law enforcement agencies." S. Rep. No. 1071, 95th Congress, 2nd Sess. at 14(1978).

2. The Inclusion of the Department of Justice Under the IG Act Would Allow an Independent IG to Interfere with or Jeopardize Ongoing External Investigations and Prosecutions

With respect to prosecutorial decisions, the establishment of an IG would engraft a new review process on existing procedures that is unnecessary and would diminish the flexibility and candor necessary to the proper exercise of prosecutorial discretion. In addition to the general conflict between review of prosecutorial decisions by an IG and the principle of the independent exercise of

See comment 9.

See comment 10.

prosecutorial discretion, there are certain instances in which the general prohibitions in the IG Act on interference with investigations and the issuance of subpoenas by the IGs would directly conflict with existing review procedures in the Department. Also, it appears that as a general matter, the Attorney General would be powerless to direct the IG to postpone or delay an investigation that the Attorney General determined could jeopardize an ongoing investigation or prosecution.

3. The Inclusion of the Department of Justice Under the IG Act Would Require the IG to Disclose Sensitive or Classified Information

The Department's concerns over the blanket extension of the IG Act include the reporting requirements under the Act. The Act requires a semi-annual report summarizing the activities of each IG during the immediate preceding 6-month period. It is further required that within 60 days of the transmission of the above-described report to the Congress, the head of each establishment should make copies of such reports available to the public upon request. The report which would be required both to Congress and the public does not address the need to protect from disclosure ongoing investigations and techniques, sensitive confidential sources, classified information, litigation material and other similar sensitive information contained in Department files. Unlike other agencies, these activities are the major functions of the Department of Justice. The only way to protect such information is to limit those who have access to it and to ensure that the agency holding the information has control over its use and dissemination. If such information were contained in the reports required of the IG, the risk of compromise is greatly increased because of the number of people who would necessarily have access to the reports, even if the reports were not required to be released to the public.

In conclusion, aside from the real legal concerns articulated above, the Department has always held that the functions of the Office of Professional Responsibility and the Audit Staff are being carried out efficiently and effectively without the creation of a statutory Office of Inspector General and without blurring the clear authority of the Attorney General to both carry out the Nation's law enforcement role and oversee enforcement action necessitated by the audit and internal investigative functions.

See comment 11.

We appreciate the opportunity to respond to your report while in draft form.

Sincerely,

A handwritten signature in black ink that reads "W. Lawrence Wallace". The signature is written in a cursive style with a large initial "W".

W. Lawrence Wallace
Assistant Attorney General
for Administration

The following are GAO's comments on the Department of Justice letter dated October 16, 1985.

GAO Comments

1. No change to report. See page 11.
2. Despite provisions of Justice Order 2900.1C, the organizational placement, reporting channels, and audit resolution and follow-up systems of the Department's various audit staffs present the appearance of a lack of independence.
3. Report amended. See para. 5, p. 18.
4. Though Justice states there is a dual reporting structure for investigations, it is not a formal one. All misconduct matters are normally reported to OPR and to the head of the unit where the investigators are located. Any investigator or investigative unit head may, if he/she deems it advisable, report misconduct matters only to OPR.
- 5., 6., 7., and 8. No change to report needed because comments restate information provided in the report.
9. No change to report needed. Agency comment addressed in para. 4 on page 24.
10. No change to report needed. Agency comment addressed in para. 3 on page 25.
11. No change to report needed. Agency comment addressed in para. 4 on page 26.

Requests for copies of GAO reports should be sent to:

U.S. General Accounting Office
Post Office Box 6015
Gaithersburg, Maryland 20877

Telephone 202-275-6241

The first five copies of each report are free. Additional copies are \$2.00 each.

There is a 25% discount on orders for 100 or more copies mailed to a single address.

Orders must be prepaid by cash or by check or money order made out to the Superintendent of Documents.

33613

United States
General Accounting Office
Washington, D.C. 20548

Bulk Rate
Postage & Fees Paid
GAO
Permit No. G100

Official Business
Penalty for Private Use \$300

A large, stylized handwritten signature or set of initials, possibly 'JH', written in black ink. The signature is fluid and cursive, with a long horizontal stroke extending to the right.